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County of Santa Clara
19CV354178
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13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

14 PEOPLE OF THE STATE OF CALIFORNIA,
15 acting by and through Santa Clara County
16 Counsel James R. Williams,

17 Plaintiff,
18 v.
19 INTUIT INC., and DOES 1-50, inclusive
20 Defendants.

21 No.

19CV354178

22 **COMPLAINT FOR VIOLATIONS OF
23 CALIFORNIA FALSE ADVERTISING
24 LAW, SEEKING RESTITUTION, CIVIL
25 PENALTIES, AND INJUNCTIVE RELIEF**

1

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I. INTRODUCTION

1. For more than a decade, Intuit Inc., the owner and operator of the electronic tax preparation and filing service TurboTax, has engaged in unlawful, false, and misleading practices targeting low- and middle-income taxpayers to become the dominant player in the online tax preparation and filing market.

2. Since the early 2000s, the United States Internal Revenue Service (“IRS”) and state tax authorities, including the California Franchise Tax Board (“FTB”), have instituted programs to allow low- and middle-income taxpayers to file their federal and state income tax returns for free. Under the IRS program, called “Free File,” Intuit and other private electronic tax preparation and filing companies agreed to provide a free version of their tax filing products to the lowest-earning 70 percent of taxpayers in exchange for the IRS promising not to create its own competing tax preparation and filing software. Intuit refers to its Free File product as “TurboTax Free File” or the “TurboTax Freedom Edition.”

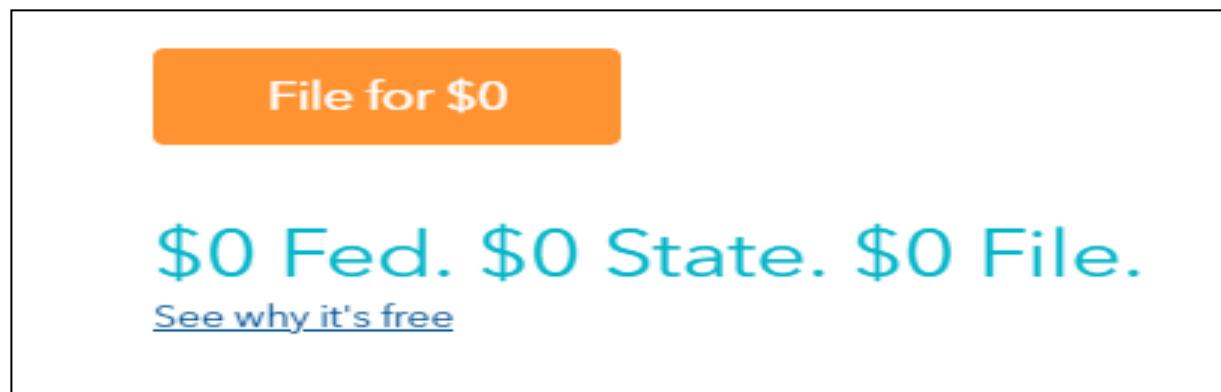
3. Despite Intuit's agreement to create a Free File product, the governmental programs requiring free tax filing options threatened Intuit's massive TurboTax profits. Intuit earns billions of dollars in revenue by charging taxpayers to use TurboTax to file their taxes. For most TurboTax users, Intuit charges \$100 or more. But because most taxpayers can file their taxes for free, few taxpayers—and particularly few lower-income taxpayers who can file for free through TurboTax Free File—will knowingly opt to pay the fees charged by Intuit for filing through the revenue-generating TurboTax products.

4. Intuit has dramatically expanded its paying userbase notwithstanding the availability of free filing options through false and deceptive advertising. To do so, Intuit has employed a sophisticated bait and switch scheme designed to lure taxpayers to use TurboTax through promises of free filing and then, once they spend hours preparing their taxes with TurboTax, telling them they actually need to pay in order to file their taxes.

5. To entice taxpayers to use TurboTax in lieu of other free or cheaper alternatives, Intuit created and maintains an online TurboTax product that appears both similar to the TurboTax Free File product and, *by its very title*, to be free—the “TurboTax Free Edition.” However, despite

1 its confusingly similar title, Intuit designed the TurboTax Free Edition to be a wholly separate
2 product from the TurboTax Freedom Edition.

3 6. Intuit then disseminated, and continues to disseminate, widespread advertising
4 stating that if taxpayers use the TurboTax Free Edition they can file their taxes for free. Intuit's
5 advertising includes multiple television commercials claiming over and over that taxpayers who use
6 the TurboTax Free Edition can file their taxes for "free, free, free, free," online advertisements
7 billing the TurboTax Free Edition as allowing users "100% Free Tax Filing, \$0 Fed, \$0 State," and
8 Google advertising listing the TurboTax Free Edition as the top search result when taxpayers look
9 for "free" tax filing options online. TurboTax's advertising of its "free" service directs taxpayers to
10 access the TurboTax Free Edition at turbotax.intuit.com. There, Intuit offers additional
11 representations confirming that taxpayers can indeed prepare and file their taxes for free, such as that
12 it is "FREE guaranteed" and a button icon that taxpayers pressed to begin preparing their taxes that
13 is entitled "File for \$0":



14
15 7. But as Intuit knows and intends, most taxpayers who click "File for \$0" and use the
16 TurboTax Free Edition cannot in fact file for free using this product. Once taxpayers spend time and
17 effort entering extensive information, Intuit executes the second part of the bait and switch scheme.
18 Intuit suddenly informs the unsuspecting taxpayer that, due to the particulars of his or her tax
19 situation he or she must upgrade to a paid version TurboTax to "accurately file." Intuit's statement
20 is both contrary to Intuit's advertising and false on its own. Upgrading has nothing to do with
21 "accurately filing"; taxpayers can accurately file the same tax return for free using other free
22 alternatives—including forms directly available from the IRS—regardless of the particulars of their
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1 tax situation. Instead, Intuit's advertising and design is simply meant to mislead taxpayers, who
2 were looking for free tax filing options and were told they could file for free with TurboTax, into
3 believing they now need to pay Intuit to file their taxes. And even at this stage, Intuit misleads user
4 regarding the actual cost of the upgrade until users spend further hours completing their returns.

5 8. While Intuit's scheme has been and remains likely to deceive a broad swath of
6 taxpayers, the deception is most egregious for the vulnerable low-income taxpayers who were
7 *entitled* to file for free through Intuit's own TurboTax Free File product. Rather than
8 "recommend[ing] the right tax solution" for taxpayers, as Intuit represented it would at
9 turbotax.intuit.com, Intuit used deceptive advertising to steer qualified taxpayers away from free
10 filing through TurboTax Free File to expensive TurboTax products. For instance, Intuit maintained
11 TurboTax Free File at a separate URL from turbotax.intuit.com and, until investigative journalists
12 recently uncovered and reported on this practice, placed tags in the code for the TurboTax Free File
13 webpage that prevented it from appearing in Google search results. As a result, a low-income
14 taxpayer who conducted an internet search for a service to help "file taxes for free" would see results
15 for Intuit's revenue-producing TurboTax Free Edition, but not the truly free TurboTax Free File.
16 And when many of those taxpayers then used the Free Edition and disclosed information that the
17 software identified as giving rise to a minor deviation from the standard tax filing format, Intuit
18 informed them they needed to pay to upgrade to accurately file even though *Intuit knew they*
19 *qualified to accurately file for free through Intuit's other, truly free product.* As a result, these low-
20 income taxpayers paid Intuit money they sorely needed for basic necessities such as food, rent, and
21 medical care to file their taxes even though they should have been allowed to file for free through
22 TurboTax, and after they were told repeatedly by Intuit filing their taxes would cost nothing.

23 9. Intuit has reaped enormous profits by deceiving taxpayers into paying for TurboTax
24 products. It has attracted millions of additional paying TurboTax users while simultaneously and
25 aggressively marginalizing free governmental filing options. In 2018, for example, although 70
26 percent of taxpayers were eligible to file for free under the Free File program, less than 3 percent did
27 so. And numerous other taxpayers who did not qualify for free government programs but could have
28 used cheaper commercial alternatives were misled into paying Intuit's high prices for TurboTax.

1 10. Intuit’s massive scheme to deceive taxpayers violated and continues to violate the
2 California False Advertising Law, Bus. & Prof. Code § 17500 *et seq.* The People of the State of
3 California (the “People”) seek injunctive relief directing Intuit to stop its unlawful promotion of its
4 tax preparation services and to correct its misrepresentations. To redress the harm Intuit has caused
5 taxpayers, the People seek restitution for those injured by Intuit’s unlawful conduct. And to punish
6 Intuit’s previous and current violations of law, the People also seek a judgment requiring Intuit to
7 pay civil penalties and any fees or costs permitted under law.

II. PARTIES

9 11. James R. Williams, County Counsel for the County of Santa Clara (“County
10 Counsel”), is authorized to bring this action in the name of the People pursuant to Business and
11 Professions Code section 17500 *et seq.*

12 12. Defendant Intuit Inc. is a Delaware corporation with its headquarters and principal
13 place of business located in California at 2700 Coast Avenue, Mountain View, California 94043.

14 13. The true names and capacities, whether individual, corporate, or otherwise, of
15 Defendants Does 1-50 are unknown to the People at this time, which therefore sues such Defendants
16 by such fictitious names and will amend this Complaint to show their true names and capacities
17 when ascertained. The People are informed, believe, and thereon allege that each of the Defendants
18 designated herein as a Doe is also legally responsible in some manner for the events and happenings
19 alleged in this Complaint.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter in this Complaint pursuant to
Article VI, Section 10 of the California Constitution, because no statute gives another trial court
jurisdiction over it.

24 15. The amount in controversy exceeds the minimum for unlimited civil jurisdiction of
25 this Court.

26 16. This Court has jurisdiction over Intuit because it is headquartered in this State and
27 because the unlawful acts that are the subject of this Complaint were performed in this State.

28 | //

17. Venue properly lies in this County because Intuit is headquartered in this County, and because many of the unlawful acts that are the subject of this Complaint were performed in this County.

IV. FACTUAL ALLEGATIONS

A. Intuit's Business Model Relies on Charging Taxpayers to File Their Taxes

18. Taxpayers throughout California are responsible for preparing and filing their own personal income tax returns. Typically, this means that each taxpayer must prepare and file a federal income tax return with the IRS and a California state income tax return with the FTB. Taxpayers residing in California may also owe state income taxes to other states, and if so, must also prepare and file state income tax returns with those states' tax authorities.

19. Certain private companies benefit from this system by charging taxpayers for personal income tax preparation and filing services. Intuit is one such company. Intuit owns and operates TurboTax, a primarily online tax preparation service that taxpayers use to prepare and file their federal and state personal income tax returns.

20. Intuit profits from TurboTax by charging TurboTax users for accessing TurboTax's service to prepare and file their personal income taxes. Intuit's profits are therefore dependent on attracting increasing numbers of taxpayers to pay to use TurboTax and convincing each TurboTax user to pay more. Intuit acknowledges this fact, writing in its 2018 Form 10-K, for example, that its "future growth depends on [its] ability to attract new customers to the self-preparation tax category or to [its] new assisted offering, TurboTax Live, from tax stores and other tax preparers," and that its year-over-year growth in the last two fiscal years has been driven, in large part, by "higher average revenue per customer," and "a shift in mix to our higher end product offerings."

B. Most Taxpayers Qualify for Free Tax Filing through Government Programs

21. The single largest threat to the TurboTax business model is the implementation of a tax filing system that eliminates taxpayers' need to pay to use commercial software for personal income tax preparation and filing. In particular, the IRS and/or state governments could implement online tax-filing systems that would allow taxpayers to file their taxes for free and could pre-prepare returns for taxpayers (meaning taxpayers would not need to fill in any information) using

1 information already reported to the government. This type of free government tax return system is
2 typically referred to as a “return-free filing system.” More than 30 other countries, including
3 Germany, Japan, Sweden, and the United Kingdom, employ a form of return-free tax filing system.
4 Because taxpayers could file for free in a return-free or other government-operated filing system
5 using pre-prepared returns, most taxpayers would likely no longer pay to use commercial tax
6 preparation software such as TurboTax were such a program implemented.

7 22. Intuit is fully aware of this threat. For example, in its 2018 Form 10-K, Intuit noted
8 that it “face[s] competitive challenges from government entities that offer publicly funded electronic
9 tax preparation and filing services with no fees to individual taxpayers,” and would be “harm[ed]”
10 by “future administrative, regulatory, or legislative activity” that replaced the current tax preparation
11 system with return preparation by government agencies. Similarly, in Intuit’s Form 10-Q for the
12 quarterly period ending April 30, 2019, Intuit explained that “government funded services that
13 curtail or eliminate the role of taxpayers in preparing their own taxes could potentially have material
14 and adverse revenue implications.”

15 23. In large part due to Intuit’s lobbying, the IRS and state tax authorities have not yet
16 instituted a full return-free filing system. However, as described below, as part of its efforts to stave
17 off a return-free filing system, Intuit has agreed to participate in government programs through
18 which private companies such as Intuit must voluntarily provide low- and middle-income taxpayers
19 with opportunities to file their taxes for free.

20 **i. Most Taxpayers Are Able to Freely File Federal Taxes through IRS Free File**

21 24. In the early 2000s, the IRS was considering instituting a return-free filing system for
22 federal tax returns. To deter the IRS from doing so, Intuit and other private-sector tax software
23 companies agreed to enter into a contractual agreement with the IRS to create the Free File program,
24 under which the tax software companies must allow most taxpayers the ability to file their federal
25 income tax returns through the companies’ commercial tax preparation and filing software at no
26 cost.

27 25. The participating private sector tax software companies are commonly referred to as
28 “Free File Alliance Members.” The terms of the agreement are set forth in the Free Online

1 Electronic Tax Filing Agreement and Amendments and the accompanying Memorandum of
2 Understanding between the Free File Alliance Members and the IRS (collectively the “Free File
3 Agreements”).

4 26. Pursuant to the Free File Agreements, Intuit and the other Free File Alliance
5 Members have agreed to “increase electronic filing of tax returns” and to “extend[] the benefits of
6 online federal tax preparation and electronic filing to economically disadvantaged and underserved
7 populations at no cost to either the individual user or to the public treasury.” In exchange, the IRS
8 has “pledged to not enter the tax preparation software and e-filing services marketplace.”

9 27. Under the Free File Agreements as they have existed over the past decade, Intuit and
10 the other Free File Alliance Members are obligated to jointly provide free federal tax services to the
11 lowest 70 percent of the taxpayer population by adjusted gross income. Per the Free File
12 Agreements, each Free File Alliance Member is committed to serve some but not all the qualified
13 taxpayers through its own software. However, the Free File Alliance Members must together ensure
14 that all 70 percent of qualified taxpayers are able to file for free through the Free File program.

15 28. In 2018, under the 70 percent threshold, the Free File Alliance Members had to allow
16 taxpayers with an adjusted gross income of \$66,000 or less the opportunity to file their taxes for free
17 through at least one Free File Alliance Members’ software, regardless of the complexity of the tax
18 returns or any particulars of the taxpayers’ financial status.

19 29. Intuit has agreed that its Free File product, TurboTax Free File, will serve the lowest-
20 income and most vulnerable taxpayers in America. In 2018, for example, Intuit agreed that
21 taxpayers with an adjusted gross income of \$34,000 or less, taxpayers with an adjusted gross income
22 of \$66,000 or less who were active military members, and taxpayers eligible for the Earned Income
23 Tax Credit, would be able to file for free using TurboTax Free File.

24 30. For those California taxpayers who use TurboTax Free File, filing a state tax return is
25 free for everyone who qualifies for a free federal return.

26 ii. **California Allows Free Filing of California State Tax Returns via CalFile**

27 31. Like the IRS, the FTB has considered instituting return-free filing for California
28 income tax returns. In 2005, the FTB initiated a pilot return-free tax return program called

1 “ReadyReturn.” Under the pilot program, 50,000 California taxpayers received a tax return that had
2 already been completed for them based on financial information reported to the FTB by employers
3 and banks. The pilot group of taxpayers then had the option of filing this pre-completed tax return
4 for free or discarding it and filing a conventional return.

5 32. The FTB has since incorporated elements of ReadyReturn into CalFile, the FTB’s
6 free electronic tax return filing program. Using CalFile, qualified California taxpayers can file their
7 state taxes for free. If taxpayers obtain a free personal identification number (“PIN”) they can pre-
8 fill their return using the FTB’s online system with data possessed by the State of California. In
9 2018 individual filers with income of up to \$194,503 and joint filers with income of up to \$389,013
10 qualified to use CalFile, subject to certain exceptions.

11 **C. Intuit’s Scheme to Maximize Its Profits by Misleading Taxpayers**

12 33. To sustain and grow its revenue and profits, Intuit has sought to attract substantially
13 more taxpayers to revenue-generating TurboTax products and to charge increasingly high prices for
14 TurboTax. As a result, the revenue-generating TurboTax products are not only substantially more
15 expensive than free filing options through the IRS Free File program of CalFile, they are also
16 significantly more expensive than competing commercial products such as TaxSlayer or TaxAct. In
17 2018, for instance, TurboTax Deluxe, the most popular TurboTax product, cost a taxpayer a
18 minimum of \$105 to file the taxpayer’s federal and California tax returns, and \$45 more for each
19 additional state in which the taxpayer needed to file. Other TurboTax products cost even more. On
20 top of this base cost, Intuit encouraged taxpayers to pay for add-ons such as additional audit
21 protection and live tax assistance, each of which added substantially to the overall costs that
22 taxpayers paid. By contrast, in 2018 the classic version of TaxSlayer cost \$49 and the basic plus
23 version of TaxAct cost just \$35 for filing a federal and California return.

24 34. The proliferation of free filing options under the IRS Free File program and CalFile
25 and competing cheaper commercial options presented Intuit with a dilemma. How could Intuit
26 convince taxpayers, most of whom can now file for free, and almost all of whom can file cheaper, to
27 pay Intuit’s high prices? Most taxpayers would not knowingly agree to pay Intuit’s high prices if it
28 was apparent they could instead use free or cheaper filing options. This is particularly true for low-

1 income families struggling to make ends meet in Santa Clara County and elsewhere in California.

2 35. Rather than reduce its prices or risk losing a significant portion of its customers, Intuit
3 implemented a sophisticated marketing scheme that lured taxpayers to use TurboTax on the promise
4 that they could do so for free, only to later tell them, after they spent hours entering information into
5 TurboTax, that they would have to pay in order to complete the process of filing their returns. In
6 doing so, Intuit falsely advertised TurboTax's cost and the availability of truly free alternatives in
7 order to hoodwink taxpayers into paying for TurboTax. Intuit's marketing scheme, which is likely
8 to deceive taxpayers and harmful to all who viewed Intuit's advertising, is particularly duplicitous
9 for those taxpayers who qualified for Intuit's own TurboTax Free File product.

10 **i. Intuit Draws Taxpayers to Turbo Tax with False Advertising About Its Cost**

11 36. Intuit has engaged in a far-reaching advertising campaign to drive taxpayers to use
12 TurboTax rather than free or cheaper alternatives through false and misleading advertisements
13 representing that taxpayers who use the advertised version of TurboTax are "guaranteed" to be able
14 to file their taxes for free.

15 37. To do so, Intuit created and maintains a seemingly free TurboTax product, the
16 TurboTax Free Edition. Critically, the TurboTax Free Edition is an entirely separate product from
17 the TurboTax Free File product, which is the product through which Intuit complies with its
18 obligations under the IRS Free File program and allows truly free filing of federal and state tax
19 returns for anyone who meets the income criteria. In fact, Intuit has used the TurboTax Free Edition
20 to steer taxpayers away from the TurboTax Free File product. As described below, Intuit has
21 extensively advertised the TurboTax Free Edition and its supposed free "guaranteed" filing while
22 simultaneously minimizing taxpayers knowledge of or ability to find the TurboTax Free File product
23 by, for example, providing it on a separate URL and then blocking that URL or descriptions of the
24 TurboTax Free File product from appearing in internet search results.

25 38. Intuit next advertised and continues to advertise across a variety of media that if
26 taxpayers use the TurboTax Free Edition they will be able to file their taxes for free.

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1 39. As part of this campaign, Intuit has created numerous television advertisements
2 emphasizing repeatedly that taxpayers who want to file their taxes for free can do so through the
3 TurboTax Free Edition. Examples of Intuit's TurboTax television advertisements can be viewed at
4 <https://www.youtube.com/results?search_query=turbotax+free+commercials/>. The 30 and 60
5 second spots consist of actors repeating the word "free" for the entire commercial before a voiceover
6 at the end confirms that TurboTax is "Free, free free free."



16 40. Intuit also paid, and upon information and belief continues to pay, Google and other
17 search engines to prominently list and link to the TurboTax Free Edition when taxpayers search for
18 free tax filing options and even for IRS Free File. For example, Intuit historically paid Google to list
19 advertisements for the TurboTax Free Edition among the top search results when taxpayers searched
20 for "IRS free file taxes." And in the advertisements that appeared in search results, Intuit described
21 the TurboTax Free Edition in a variety of ways as free to file. For instance, Intuit described it as
22 "Free Federal. Free State. Free to File" and costing "Absolutely nothing!"

24 TurboTax Free Edition. Free Federal. Free State. Free To File. | The ...

25 [https://blog.turbotax.intuit.com/turbotax.../turbotax-free-edition-free-federal-free-state... ▾](https://blog.turbotax.intuit.com/turbotax.../turbotax-free-edition-free-federal-free-state...)

26 Dec 4, 2018 - Absolutely nothing! That's why, for the fifth year in a row, TurboTax is offering free federal
27 and state tax filing with TurboTax Free Edition.

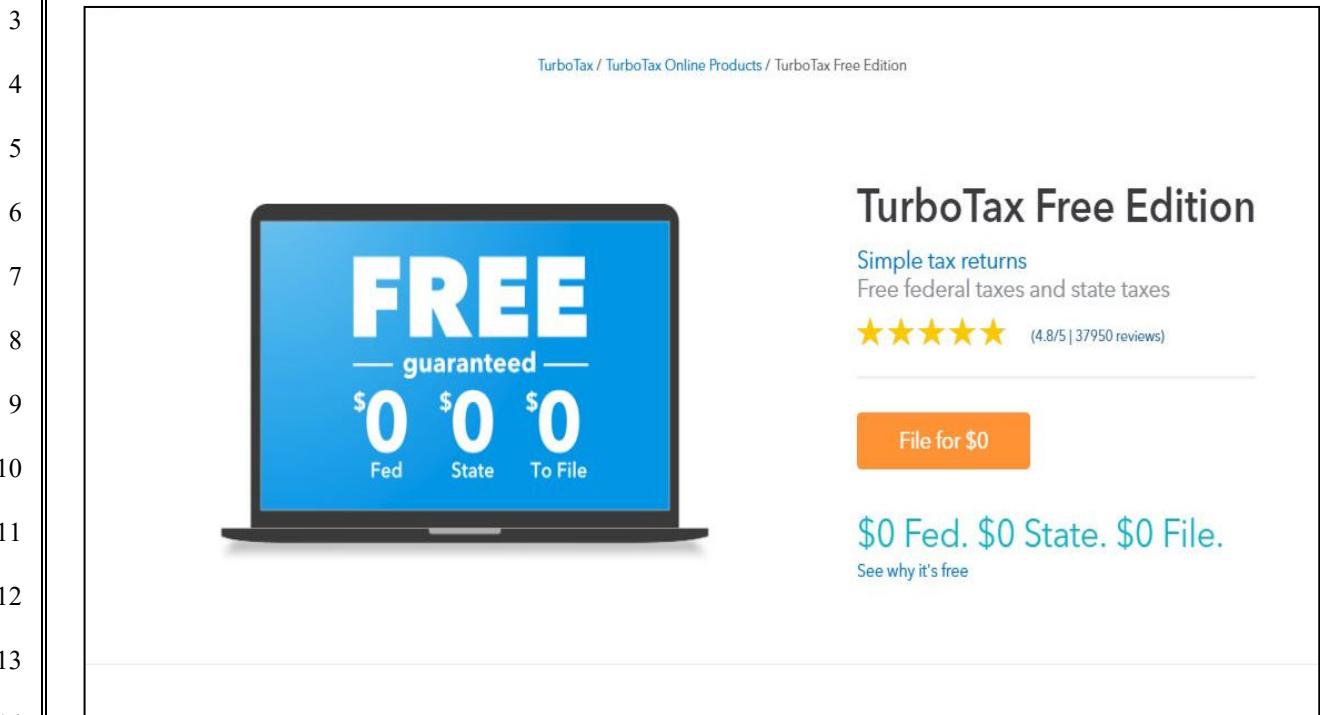
1 41. Although Intuit has changed some of its advertising in the past few months following
2 several news articles exposing its deceptive conduct, Intuit continues to list the TurboTax Free
3 Edition as the first Intuit-sponsored result in a Google search for “TurboTax free.” In the listing,
4 Intuit describes the TurboTax Free Edition as “100% Free Tax Filing, \$0 Fed \$0 State” with the
5 promise that TurboTax is “your free tax filing solution.”

19 42. Intuit even created a fake crossword puzzle that it published on the New York Times
20 website next to the real crossword puzzle entitled “Free” by “Free.F.Free” with prominent TurboTax
21 branding. A copy of the crossword puzzle is incorporated by this reference and attached as Exhibit
22 A. It contains 68 clues, such as “TurboTax Free is __” and “No charge.” The answer to every clue
23 is “free.”

24 43. Intuit's advertisements direct taxpayers to the URL turbotax.intuit.com, the revenue-
25 producing URL for the TurboTax Free Edition, and not to TurboTax Free File.

26 44. When taxpayers access this URL, Intuit again claims that they will be able to file for
27 free through the TurboTax Free Edition. For example, as of September 5, 2019, Intuit continues to
28 include the advertisement below, which contains a “FREE guarantee[],” a statement users could pay

1 “\$0” for their federal and state taxes, for a total of \$0, and a button icon to begin the filing process
2 entitled “File for \$0” with the hyperlinked message “See why it’s free”:



15 45. Intuit’s advertisements were and are false and misleading. Contrary to its statements
16 that taxpayers are guaranteed to be able to “File for \$0” using the TurboTax Free Edition, Intuit
17 deliberately designed that product to allow only a tiny percentage of taxpayers to file for free by
18 building triggers into its software that requires taxpayers to pay to file their return if there is any
19 deviation from the most standard tax filing. For example, Intuit charges taxpayers to file if they
20 meet *any* of the following criteria: they are self-employed, do not have health insurance, have
21 unemployment pay, have prize money, pay or receive alimony, have business income or losses, have
22 capital gains or losses, have income from rental real estate, receive royalties, have farm income or
23 losses, claim a student loan deduction, claim a health savings account contribution deduction, claim
24 deductible educator expenses, claim education credits, claim retirement savings contribution credits,
25 or claim credit for child and dependent care expenses. And even this list includes only *some* of the
26 bases upon which the software will require a taxpayer to pay before filing. Taxpayers who cannot
27 file for free include numerous taxpayers who have what any reasonable person would consider a
28 simple tax return. Moreover, despite Intuit’s advertising that taxpayers who use the TurboTax Free

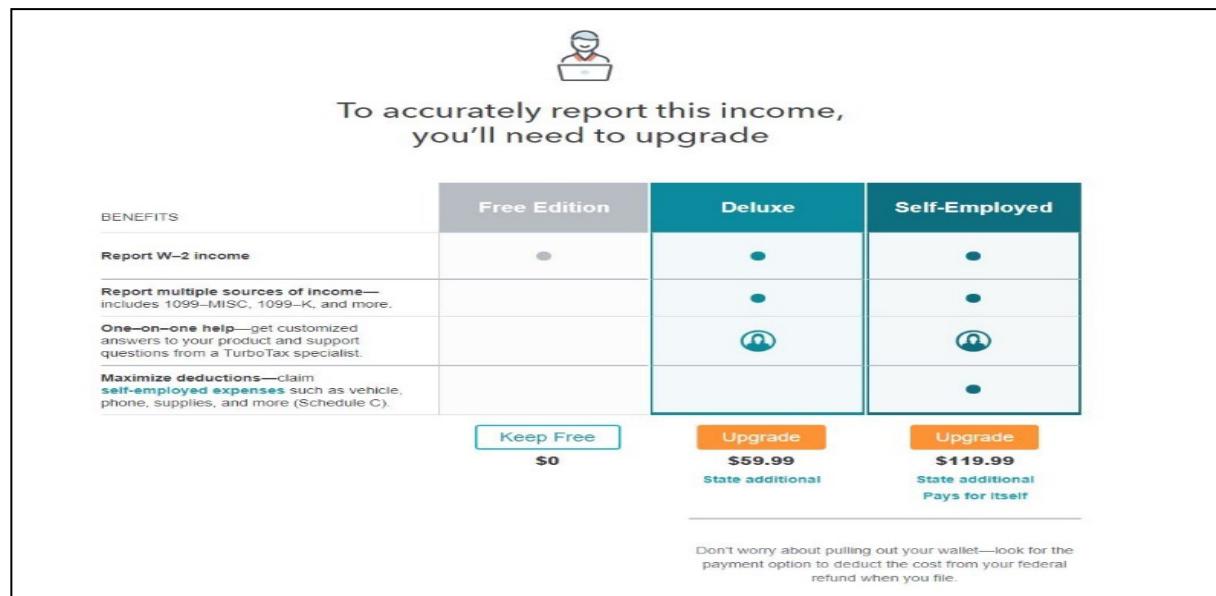
1 Edition can file for free, Intuit in fact designed the TurboTax Free Edition so that it *requires a*
2 *massive number of low-income taxpayers who qualify to file their taxes for free*, including through
3 IRS Free File and CalFile, to *pay to file*.

4 **ii. Intuit Misleads Taxpayers into Paying Substantial Sums to File Via TurboTax**

5 46. Intuit's false advertising that taxpayers who use the TurboTax Free Edition can file
6 for free was and remains intentional and a key part of Intuit's bait and switch scheme to draw
7 taxpayers away from truly free or cheap filing alternatives. Once taxpayers click the orange "File
8 for \$0" button and begin using the TurboTax Free Edition, Intuit provides further deceptive
9 advertising designed to convince them to pay for expensive TurboTax products and other offerings.

10 47. After taxpayers access the TurboTax Free Edition, they are directed to a page that
11 lists "TurboTax Free Edition" on the left-hand side and at the top of the browser window,
12 confirming they are preparing their taxes through Intuit's "guaranteed" "free" tax filing program.

13 48. Intuit then prompts taxpayers to enter their personal and financial information. After
14 they spend significant time entering their information, most eventually provide data that necessitates
15 a basic change to the standard format tax return—for example, that they worked as an Uber driver or
16 are paying off a student loan—which Intuit intentionally designed the Free Edition to exclude from
17 the returns eligible for free filing. At this point, Intuit tells them that to "accurately report" their
18 taxes, they need to pay to upgrade to another TurboTax program:



1 49. Intuit's statements are again knowingly false and misleading. As an initial matter,
2 Intuit's decision to design the TurboTax Free Edition to require a taxpayer with no health insurance,
3 for example, to pay to upgrade to an expensive TurboTax product has nothing to do with the
4 "accuracy" of that taxpayer's return. To the contrary, as Intuit knows, many of these misinformed
5 taxpayers qualify for free filing options through which they could accurately report their income,
6 including the IRS Free File program and CalFile, rather than having to pay for an expensive upgrade.
7 Intuit's deception of the taxpayers who qualify to use Intuit's own TurboTax Free File is especially
8 appalling. Intuit knows that those taxpayers—the lowest-income taxpayers who can least afford to
9 pay—can accurately file for free through *another TurboTax product offered by Intuit*, but
10 nonetheless hides that option and misinforms them that they need to pay \$105 or more to upgrade in
11 order to "accurately" file.

12 50. Even if taxpayers click the "Keep Free" icon on the page shown in Paragraph 48,
13 signaling that they are looking for any option that would allow free filing, Intuit simply repeats the
14 same false representation that the taxpayer needs to upgrade to accurately report.

15 51. The misrepresentations do not end there. Intuit's strategy of initially informing
16 taxpayers that they can file for free through TurboTax and then waiting to tell them they must pay to
17 upgrade until after they have spent several hours entering information places the taxpayers in a lose-
18 lose scenario. They must either waste the time they spent and leave TurboTax to go a truly free
19 option or they must pay the price to upgrade. But because even taxpayers who learn the cost of
20 upgrading at this point in the TurboTax process might still choose to leave TurboTax, Intuit employs
21 additional deceptive advertising about TurboTax's cost.

22 52. For instance, in the example above, Intuit listed the price to upgrade to TurboTax
23 Deluxe as \$59.99. However, Intuit did not include the additional \$44.99 it will charge for filing each
24 necessary state tax return. Further, Intuit's encouragement to taxpayers to pay Intuit's fees with
25 their refund, stating "Don't worry about pulling out your wallet—look for the payment option to
26 deduct the cost from your federal refund when you file[,]” fails to disclose the \$40 fee Intuit will
27 charge for taking its payment out of a taxpayer's federal refund. All told, rather than the \$59.99
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1 advertised by Intuit for the supposedly required “upgrade” to “Deluxe,” a user who upgraded and
2 opted to take the payment to Intuit out of a federal refund was charged at least \$144.98.

3 53. Beginning in 2019, the news organization ProPublica published a series of articles
4 publicly disclosing Intuit’s false advertising for the first time. In the ProPublica articles, former
5 Intuit employees admitted Intuit’s intent to lure taxpayers to TurboTax by false advertisements of
6 free filing and then to ultimately manipulate those individuals into paying to use TurboTax.

7 54. For example, a former midlevel Intuit employee told ProPublica journalists that
8 Intuit’s “entire strategy is [to] make sure people read the word ‘free’ and click our site and never
9 use” a product that is actually free. The employee explained that Intuit designed its page to “direct
10 you through a product flow that the company wanted to ensure would not make you aware of Free
11 File.” The “vast majority of people who click [the TurboTax Free Edition] will not pay \$0.”¹

12 55. Another former TurboTax vice president wrote on LinkedIn that she had been
13 “charged with addressing the threat posed by IRS free efile” and had “revamped TurboTax
14 marketing strategy for low-end tax filers,” driving a “100% increase in revenues.”² In other words,
15 Intuit tasked a TurboTax vice president with steering vulnerable low-end tax filers who qualified to
16 file for free to expensive TurboTax products. She successfully created the marketing strategy that
17 did so, and then boasted about it as a career accomplishment because it doubled Intuit’s profits.

18 56. Similarly, former Intuit employees have admitted that Intuit considered and rejected
19 ideas that would have rendered their advertising less misleading. A former Intuit marketing
20 employee told ProPublica that a new employee proposed at a meeting with staff up to senior
21 manager level that TurboTax users who provided information confirming their eligibility for IRS
22 Free File be provided a clear recommendation they use that product. This new employee saw and
23 attempted to correct Intuit’s deceptive practice of informing users eligible for free filing that they

24 ///

25

26 ¹ Elliot and Kiel, *TurboTax and H&R Block Saw Free Tax Filings as a Threat – and Gutted It* (May
27 2, 2019) ProPublica <<https://www.propublica.org/article/intuit-turbotax-h-r-block-gutted-free-tax-filing-internal-memo>> (as of Sep. 5 2019).

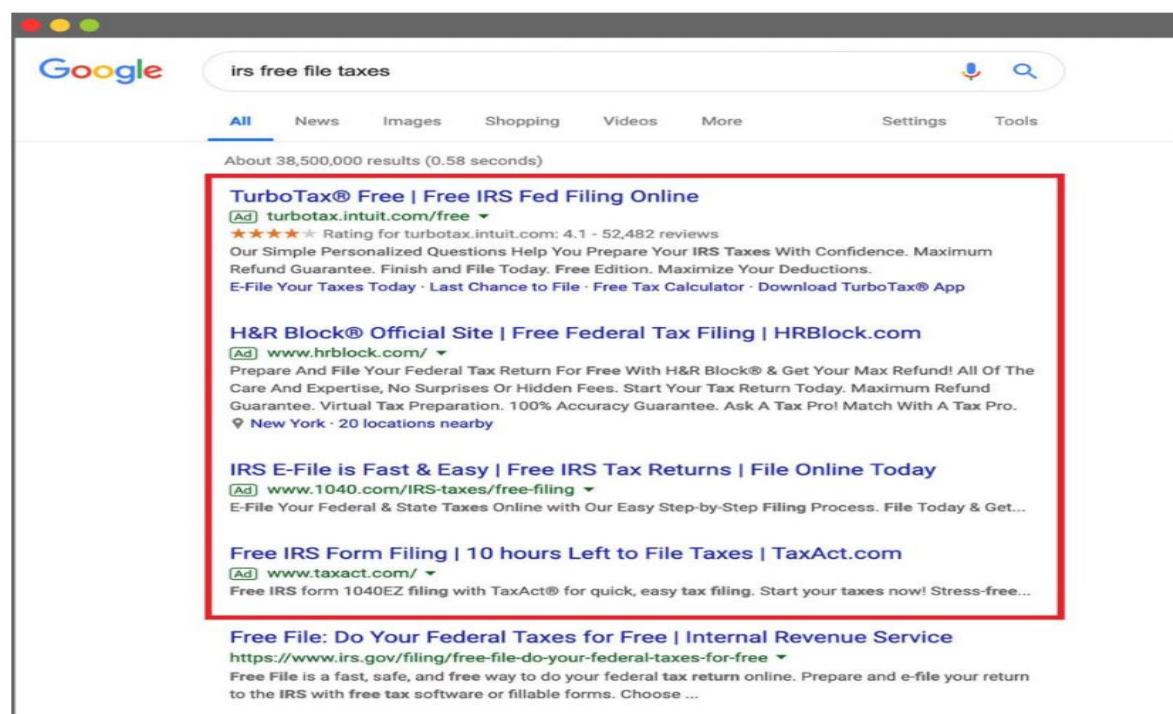
28 ² *Ibid.*

1 needed to pay. According to the former marketing employee, when she proposed this idea, other
2 employees at the meeting laughed and the meeting moved on.³

3 **iii. Intuit Has Misled Taxpayers About the Availability of TurboTax Free File**

4 57. To maximize its profits, Intuit not only wants to drive traffic to its paid TurboTax
5 products but also to minimize the number of low-income taxpayers who learn about and use Intuit's
6 actual free product, TurboTax Free File. Intuit thus has engaged in several deceptive tactics to
7 mislead taxpayers about their ability to use that product to file for free.

8 58. When Intuit created TurboTax Free File, Intuit created a separate URL to host it:
9 intuit.turbotax.com/taxfreedom. Intuit then hid that URL. Until its practice was recently exposed by
10 ProPublica, Intuit actively manipulated the coding within the TurboTax Free File URL
11 (intuit.turbotax.com/taxfreedom) to prevent Google's search engine from listing any links to that
12 URL, including when taxpayers entered search terms such as TurboTax and Free File. At the same
13 time, Intuit paid Google to list advertisements for its revenue-producing URL (turbotax.intuit.com)
14 among the top search results when taxpayers searched for free tax services, even when using search
15 terms as specific as "IRS free file taxes":



28 ³ *Ibid.*

1 59. Intuit also included descriptors in its online advertising, including the terms
2 “TurboTax® Free” and “Free IRS Fed Filing Online” shown above, that created the impression that
3 taxpayers would be directed to a website that allowed them to take advantage of their entitlement as
4 low-income taxpayers to prepare and file their taxes for free. Again, the link sent taxpayers to
5 Intuit’s revenue-producing URL, turbotax.intuit.com, and not to the TurboTax Free File URL.

6 60. When taxpayers have accessed the revenue-producing TurboTax URL, Intuit included
7 and continues to include misleading statements to convince them that no Free File product is
8 available. For example, the revenue-producing TurboTax URL prominently contains a link entitled
9 “Online Products.” When taxpayers click that link, Intuit purports to list the available TurboTax
10 products. However, while the list includes the TurboTax Free Edition and TurboTax products
11 costing money such as TurboTax Deluxe, it omits any reference to TurboTax Free File. Lower on
12 the revenue-producing TurboTax URL Intuit includes another link entitled “All online tax
13 preparation software.” At this link, Intuit again purports to list all of its online tax preparation
14 software, and again includes the TurboTax Free Edition and TurboTax products costing money but
15 omits TurboTax Free File. In fact, until recently, if a taxpayer searched turbotax.intuit.com after
16 viewing TurboTax’s advertising to find free tax filing options, he or she would find no reference to
17 or ability to access TurboTax Free File and would be exclusively directed for supposedly free filing
18 to the TurboTax Free Edition.

19 **iv. Intuit Has Employed Deceptive Advertising on the TurboTax Free File Webpage**

20 61. Despite Intuit’s efforts to hide TurboTax Free File, some qualified taxpayers
21 successfully access its URL. In yet another dimension of its scheme, Intuit engaged in further
22 deception to attempt to direct those taxpayers back to turbotax.intuit.com and to ultimately pay to
23 use TurboTax.

24 62. First, Intuit designed the TurboTax Free File Program URL to include misleading
25 statements to taxpayers regarding their eligibility for the Free File program. For example, Intuit
26 included prominent statements on the main page of the website creating the false impression that if
27 taxpayers did not meet TurboTax’s Free File product requirements, including the \$34,000 cap on
28 adjusted gross income, the taxpayers did not qualify for the Free File program and so should file

1 through TurboTax standard products by clicking an icon entitled “Start for Free.” Intuit knew that
2 taxpayers who earned between \$34,000 and \$66,000 qualified for the IRS Free File program and
3 could file for free through other Free File Alliance Member products. But by misleading them about
4 this fact and encouraging them to access the other TurboTax products “for free,” Intuit redirected
5 those taxpayers into TurboTax products that Intuit intended to sell to them using the same deceptive
6 scheme discussed above. Intuit omitted any mention that these taxpayers qualified to file for free
7 using another Free File Alliance Member products.

8 63. Second, Intuit rerouted a substantial portion of taxpayers who attempted to access
9 TurboTax Free File back to revenue-generating TurboTax products without their knowledge. When
10 first accessing TurboTax Free File, Intuit prompted taxpayers to provide their email, Intuit user ID,
11 and password. If a taxpayer had a preexisting account with Intuit—for example, because that
12 taxpayer began preparing a tax return using a different TurboTax product—the act of logging into
13 TurboTax Free File with that preexisting account information caused that user to be automatically
14 redirected to the TurboTax product that the taxpayer had previously accessed. Intuit provided no
15 notice to these users that they were being forced away from TurboTax Free File and provided no
16 means to these users to opt instead to use TurboTax Free File. At this point, the user, who qualified
17 to file for free and had been told by Intuit that he or she was entering the TurboTax Free File system,
18 instead was routed into a revenue-generating TurboTax product and likely paid to file.

19 **D. Intuit Has Massively Profited by Harming Vulnerable Taxpayers**

20 64. Intuit’s deception has greatly profited Intuit while harming taxpayers throughout
21 California and in Santa Clara County specifically.

22 65. Upon information and belief, millions of Californians and hundreds of thousands of
23 Santa Clara County residents viewed Intuit’s false and misleading advertising and then paid to use
24 TurboTax to file their taxes.

25 66. Many of those taxpayers were looking for—and qualified for—actual free filing
26 options but were misled by Intuit into paying money they could ill afford to spend for TurboTax
27 products. In response to ProPublica’s reporting, a substantial number of taxpayers have contacted
28 ProPublica and alleged they sought out and qualified for free filing options but were misled by Intuit

1 into paying for TurboTax.⁴ For example, an unemployed mother and part-time father raising two
2 disabled sons who qualified for free filing were charged almost \$200 by Intuit to use TurboTax.⁵ A
3 graduate student who earned less than \$10,000 paid Intuit \$100 for TurboTax.⁶ And numerous
4 military personnel who met free filing thresholds were misled by Intuit into using TurboTax.⁷ These
5 individuals were deceived into paying scarce resources to Intuit—a corporation that takes in billions
6 in revenue every year—rather than using those resources for rent, groceries, and other basic living
7 expenses.

8 67. In large part due to Intuit’s pattern of deception, less than three percent of eligible
9 Free File taxpayers did so nationwide. A similarly small percentage of eligible CalFile taxpayers use
10 it to file their state tax returns for free.

11 68. Meanwhile, propelled by its deceptive marketing, Intuit’s revenue and profits have
12 increased by leaps and bounds. TurboTax is now the most used tax preparation software in the
13 United States. In 2003, Intuit reported \$422.9 million in revenue from TurboTax sales. By 2018,
14 Intuit reported selling nearly 32 million units of TurboTax Online and earning nearly \$3 billion in
15 revenue from those sales. In fiscal year 2018 alone, Intuit’s Consumer segment, which is “derived
16 primarily from TurboTax Online tax return preparation software,” increased by \$316 million—a
17 14% increase from fiscal year 2017.

18 69. The People first learned of Intuit’s false advertising and its deceptive conduct
19 described above in April 2019 after ProPublica published the article “Here’s How TurboTax Just
20 Tricked You into Paying to File Your Taxes” on April 22, 2019.

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24 4 Tobin, et al., *Here Are Your Stories of Being Tricked into Paying by TurboTax. You Often Need*
25 *the Money* (Apr. 26, 2019) ProPublica <<https://www.propublica.org/article/here-are-your-stories-of-being-tricked-into-paying-by-turbotax-you-often-need-the-money>> (as of Sep. 5, 2019).

25 5 *Ibid.*

26 6 *Ibid.*

27 7 Elliot and Tsutsumi, *TurboTax Uses a “Military Discount” to Trick Troops Into Paying to File*
28 *Their Taxes* (May 23, 2019) ProPublica <<https://www.propublica.org/article/turbotax-military-discount-trick-troops-paying-to-file-taxes>> (as of Sep. 5, 2019).

1 70. After ProPublica published that article and subsequent stories thereafter, Intuit's
2 response has been brazen indifference and further deception. After ProPublica's initial stories,
3 multiple TurboTax users who qualified for IRS Free File but were misled into paying to use
4 TurboTax reported to ProPublica that they had contacted Intuit to obtain a refund.⁸ After a few
5 initial refunds were granted, Intuit quickly settled on a different response. It denied the refunds and
6 provided the callers with false information that Intuit was not responsible for the TurboTax Free File
7 product and that ProPublica's stories about TurboTax were "fake news."⁹

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FALSE ADVERTISING

PLAINTIFF V. DEFENDANT
(Violation of Business and Professions Code section 17500, *et seq.*)
(Against all Defendants)

12 71. The People allege and incorporate all the allegations set forth above in Paragraphs
13 1-70.

14 72. Business and Professions Code Section 17500 (the “FAL”) makes it unlawful for a
15 business, “with intent . . . to perform services... or induce the public to enter into any obligation” to
16 make, disseminate, or cause to be made or disseminated to the public, including over the internet,
17 “any statement, concerning . . . such services” or “concerning any circumstance or matter of fact
18 connected with the proposed performance or disposition thereof,” which is *either* “untrue or
19 misleading, and which is known, or which by the exercise of reasonable care should be known, to be
20 untrue or misleading,” *or* that serves “as part of a plan or scheme with the intent not to sell such . . .
21 services . . . at the price stated therein, or as so advertised.”

22 73. As alleged above, at all times relevant to this Complaint, Intuit violated the FAL by
23 making false or misleading statements about TurboTax and taxpayers' ability to file their taxes for
24 free, by causing such statements to be made and disseminated to the public, and by making

²⁶ Elliot and Marco, *Listen to TurboTax Lie to Get Out of Refunding Overcharged Customers* (May 9, 2019) ProPublica <<https://www.propublica.org/article/listen-to-turbotax-lie-to-get-out-of-refunding-overcharged-customers>> (as of Sep. 5, 2019).

28 | 9 *Ibid*

1 statements that taxpayers could use TurboTax for free with the intent to charge most of those
2 taxpayers to use TurboTax and/or to sell a different service than advertised.

3 74. Intuit deliberately implemented a scheme to draw taxpayers to TurboTax's revenue-
4 producing URL with false representations that they could file their taxes for free using TurboTax
5 and then to charge those taxpayers significant sums to file through additional false and misleading
6 statements.

7 75. As part of this scheme, Intuit made and disseminated myriad statements that are likely
8 to deceive members of the public on its website and in advertisements. Examples of Intuit's false or
9 misleading statements include:

10 a. *Television and web advertisements and Google search results:*

- 11 • Falsely representing in numerous television advertisements that if
12 taxpayers used the TurboTax Free Edition they would be able to file
for free, including in an ad campaign using the tagline: "Free, free free
free."
- 13 • Falsely representing in extensive online advertisements that if
14 taxpayers used the TurboTax Free Edition they would be able to file
for free.
- 15 • Falsely advertising the TurboTax Free Edition in online
16 advertisements as "Guaranteed Free," and as "Free Federal," "Free
State," and "Free File," requiring "absolutely nothing."
- 17 • Falsely advertising on Google with links entitled "TurboTax® Free"
18 and "Free IRS Fed Filing Online" that in fact linked to the revenue-
generating TurboTax URLs rather than TurboTax Free File.

19 b. *Statements on the revenue-producing TurboTax site:*

- 21 • Falsely describing the TurboTax Free Edition as the only free
22 TurboTax product and omitting mention of the TurboTax Free File
product.
- 23 • Falsely representing that if taxpayers use the TurboTax Free Edition
24 they are charged "\$0" for federal taxes, "\$0" for state taxes, and "\$0"
for filing.
- 25 • Falsely representing that taxpayers who access the TurboTax Free
26 Edition could file for "FREE guarantee[d]."
- 27 • Falsely representing that taxpayers could "File for \$0" if they clicked
on the TurboTax Free Edition icon.

28 ///

- 1 • Falsely stating to taxpayers that they had to pay hundreds of dollars to
2 upgrade to a different product in order to “accurately report” their
3 income after taxpayers had invested substantial time inserting their
4 personal and financial information.
- 5 • Encouraging taxpayers to use their federal refund to pay for upgrades
6 while failing to disclose that taxpayers would be charged substantial
7 additional money to do so.

8 c. *Statements on the TurboTax Free File site:*

- 9 • Falsely informing taxpayers with over \$34,000 in adjusted gross
10 income that they did not meet the qualifications for Free File.
- 11 • Falsely informing taxpayers that they had accessed the TurboTax Free
12 File product when they were in fact using a different TurboTax
13 product that would cost money to use.

14 76. At the time Intuit made the statements alleged above or caused them to be
15 disseminated it knew and should have known the statements were false and misleading and likely to
16 deceive the public. Intuit knew and intended that its false and misleading advertising created a false
17 impression that taxpayers could file for free through the standard TurboTax products.

18 77. Intuit’s scheme has been wildly profitable. Intuit has not merely been able to
19 preserve its corporate profits, initially threatened by free filing options, but has experienced dramatic
20 year on year increases in revenue and income. Intuit profits have come at the expense of the low-
21 and middle-income taxpayers who qualified to file for free and have been deceived into paying their
22 sorely needed resources to a multi-billion-dollar corporation.

23 78. Pursuant to Business and Professions Code Section 17535, the People request an
24 order enjoining Defendants from any further violations of Section 17500, *et seq.*

25 79. Pursuant to Business and Professions Code Section 17535, the People request
26 restitution of any money acquired by virtue of Defendants’ violations of Section 17500, *et seq.*

27 80. Pursuant to Business and Professions Code Section 17536, the People request an
28 order assessing a civil penalty of \$2,500 against Defendants for each violation of Section 17500, *et
seq.*

29 ///

30 ///

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the People, pray that the Court:

1. Declare that Defendants have made, disseminated as part of a plan or scheme, or aided and abetted the dissemination of false and misleading statements in violation of the False Advertising Law;

2. Enjoin Defendants from performing or proposing to perform and further false or misleading statements in violation of the False Advertising Law.

3. Order Defendants to pay restitution of any money acquired by means of Defendants' false and misleading advertising, pursuant to Business and Professions Code sections 17500 and 17535.

4. Order Defendants to pay \$2,500 civil penalties for each act of false and misleading advertising pursuant to Business and Professions Code sections 17500 and 17536.

5. For pre- and post-judgment interest;

6. For attorneys' fees and costs; and

7. For such other and further relief as the Court deems proper.

Dated: September 6, 2019

Respectfully submitted,

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA
JAMES R. WILLIAMS, County Counsel
GRETA S. HANSEN, Chief Assistant County Counsel
KAVITA NARAYAN, Lead Deputy County Counsel
AARON BLOOM, Deputy County Counsel
TONY LOPRESTI, Deputy County Counsel

By:

AARON H. BLOOM
Attorneys for Plaintiff,
PEOPLE OF THE STATE OF CALIFORNIA

2077217

Exhibit A

FREE

By Free F. Free

DOWN:

- 1 TurboTax Free is ____
- 2 EERF backward
- 3 Rhymes with tree
- 4 Opposite of not-free
- 5 ____ refills
- 6 With TurboTax, simple returns are ____
- 7 To set loose
- 9 Buy one, get one ____
- 11 \$0.00
- 12 No charge
- 13 Off the hook
- 16 Samples at the grocery store
- 17 Four letters
- 18 Same as 19-Down
- 19 Same as 20-Across
- 22 Rhymes with tree
- 23 The truth will set you ____
- 24 Phonetics: Fuh-Ree
- 25 Sterile or germ-____
- 26 You know the answer
- 27 The answer is FREE
- 30 [Insert clue here]
- 31 A four-letter word that means basically the exact same thing as "Free" and, in fact, is free
- 32 Uncaged
- 34 Unleashed
- 35 ____-range chicken
- 36 It's so cold I'm ____ zing
- 38 Chargeless
- 39 Complimentary
- 40 First Amendment, shortened: ____ speech

- 41 If you pay nothing for something, then it's ____
- 42 Seriously, you can't get this wrong
- 45 If it's TurboTax Free, it's ____
- 46 FREE
- 47 ____ in-flight Wi-Fi
- 48 free
- 49 Two F's, two R's, four E's
- 53 Combine 45-Across and 4-Down, then just pick one
- 55 F____
- 59 R____
- 60 E____
- 61 E____
- 62 Freebie—it's free
- 63 \$\$\$
- 64 Sugar-____

ACROSS:

- 1 At no cost
- 2 Gluten-____
- 4 REFE unscrambled
- 8 Gratis
- 9 TurboTax ____ is free
- 10 Put this in your car when it gets cold: Anti-____ze
- 11 F to the REE
- 13 Free
- 14 Not a highway but a ____way
- 15 Exact same word as free
- 20 FREE
- 21 FREE
- 22 FREE
- 25 FREE
- 26 FREE
- 28 Duty-____ store
- 29 Just write "free"
- 31 Same answer as everything else
- 32 "Phree," spelled correctly
- 33 It's "Free," twice
- 35 (\$10 x 2) - \$20 = ____
- 36 Did we mention TurboTax Free is ____?
- 37 No dollars and zero cents
- 38 ____ throws, worth one point each
- 42 "Kostenlos" in Germany
- 43 "Libre" in France
- 44 Opposite of confined
- 45 Sugar-____ gum
- 50 Spoiler alert: It's free
- 51 Open
- 52 Four-letter word for free
- 54 Contract position: ____lancer
- 56 Freeeeeeeeeeeeee (minus 11 E's)
- 57 99% (use mirror)
- 58 Land of the ____
- 62 "Please enjoy a ____ sample"

